

Nanaimo, B.C.

Called to the Bar July 10, 1979

Discipline hearing panel: August 2, 1995

G.L.F. Somers, Q.C., Chair, H. Rankin, Q.C. and M. Martin

G. Cuttler, for the Law Society

E.D. Crossin, for Mr. Dunn

Summary

From 1990 to 1992, Mr. Dunn improperly billed the Legal Services Society under the legal aid criminal tariff for his representation of certain clients, though he was retained as duty counsel at the time and had no pre-existing solicitor-client relationship with the clients. In these instances, Mr. Dunn completed eligibility forms for the clients recklessly and without due and proper regard for accuracy, and he subsequently submitted improper billings. At the time, Mr. Dunn lacked organizational skills in his law practice and was suffering from emotional problems and an alcohol dependency. He admitted, and a discipline hearing panel found, that he was guilty of professional misconduct.

Facts

From 1990 to 1992, Mr. Dunn improperly billed the Legal Services Society (LSS) for his representation of clients in Provincial Court, including the four clients described below, even though he was serving as duty counsel.

As duty counsel, Mr. Dunn was paid an hourly fee by LSS (\$40 an hour to a maximum of \$135 a day from January to May 31, 1991, a fee that increased to \$80 an hour to a maximum of \$270 per day from June 1 to December 31, 1991.) Mr. Dunn knew that he was not entitled to bill LSS for the representation of the individual clients whom he served as duty counsel, unless he had a pre-existing solicitor-client relationship with them.

Client D

Mr. Dunn served as duty counsel for the Legal Services Society on March 26, 1991. He met, interviewed and represented D on sentencing that day. Mr. Dunn completed an LSS eligibility assessment form for D, and D signed the form. The form stated that Mr. Dunn had interviewed D on March 21, though he had not.

He submitted an account for his work as duty counsel on March 26, and did not list D as one of his duty counsel clients.

Mr. Dunn billed LSS \$310 for representing D on March 26, which he was not entitled to do.

Client J

While serving as duty counsel for the Legal Services Society on March 27, 1991, Mr. Dunn met and interviewed J, whom he represented on a guilty plea that day. Mr. Dunn completed an LSS eligibility assessment form for J, stating that he had interviewed J on March 21, though he had not.

Mr. Dunn submitted his account as duty counsel for March 27, and did not list J as one of his duty counsel clients.

He billed LSS \$180 for representing J on the guilty plea on March 27, \$150 for a stay of proceedings on March 22 (though he did not in fact appear for J that day) and \$75 for sentencing on May 17.

Client S

While serving as duty counsel on March 27, 1991, Mr. Dunn met with S, whom he represented on a guilty plea. Mr. Dunn completed an LSS eligibility assessment form, which S signed. The form states that Mr. Dunn had interviewed S on March 22, though he had not.

When Mr. Dunn submitted to LSS an account for his March 27 duty counsel services, he did not include S in his list of clients.

Mr. Dunn billed LSS \$180 for entering the guilty plea for S on March 27, \$150 for an early termination on March 22 and \$75 for sentencing on April 24. He did not in fact appear for S on March 22 and he was not entitled to bill for the guilty plea on March 27 since the plea was not entered until April 24.

Client R

On September 20, 1991, while acting as duty counsel, Mr. Dunn represented R on a guilty plea and on sentencing. In completing an LSS eligibility assessment form, which R signed, Mr. Dunn indicated that he had interviewed R on September 9, though he had not. Mr. Dunn rendered an account to LSS for his duty counsel services on September 20. He did not include R in his list of duty counsel clients that day.

Mr. Dunn billed LSS \$260 for entering the guilty plea, and LSS subsequently paid him \$520 when the criminal tariff doubled.

* * *

When he completed the LSS eligibility assessment forms, Mr. Dunn did so recklessly, without due and proper regard for accuracy and, in particular, without due and proper regard for accuracy respecting the dates on which he first interviewed the clients, though he knew that the Legal Services Society relied on counsel to accurately record this information.

At the time, Mr. Dunn was a sole practitioner with a heavy workload and no staff. He lacked the management and organizational skills to properly administer his practice. Emotional problems, including an addiction to alcohol and depression, exacerbated the situation, and he found himself unable to cope with his personal or professional life.

Mr. Dunn's billing practices were inadequate, and his reckless work habits and record-keeping resulted in him rendering accounts for work when he was not entitled to do so. On other occasions, he failed to bill for work when he was entitled to do so.

When contacted by the Legal Services Society in Spring of 1992 about some of his billings, Mr. Dunn realized that he could not properly administer his practice. He subsequently sought treatment for his emotional problems and for his alcohol dependency, and he had since remained sober.

Mr. Dunn did not practise law during 1993, but later joined a law firm part time. Despite his difficulties, Mr. Dunn continued to enjoy a reputation in the profession for integrity, hard work and compassion.

Decision

Pursuant to Rule 469, Mr. Dunn admitted, and the hearing panel found, that his conduct constituted professional misconduct.

Penalty

The hearing panel accepted Mr. Dunn's proposed disciplinary action, and ordered that:

- Mr. Dunn be suspended from the practice of law for six months, beginning August 2, 1995;
- Mr. Dunn must appear before a board of examiners before being permitted to resume the practice of law;
- prior to appearing before the board of examiners, Mr. Dunn must attend an examination by one of three psychiatrists chosen by the Law Society, and whose report must be placed before the board of examiners;

- the board of examiners must be satisfied that Mr. Dunn is competent to practise law and is not adversely affected by a mental disability or dependency on alcohol or drugs before he is permitted to resume practice;
- Mr. Dunn must not practise law except in association with a particular law firm, which must perform billing and accounting functions for him and, in the event of any concerns relating to his competency to practise, mental ability or dependency on alcohol or drugs, may report those concerns to the Competency Committee. In the alternative, Mr. Dunn must practise with a mentor residing in his community who is approved by the Competency Committee or the board of examiners;
- Mr. Dunn must reimburse the Legal Services Society an amount equal to the inaccurate billings with respect to clients D, J, S and R, not later than December 31, 1995;
- Mr. Dunn must pay costs of \$14,400, at \$600 per month for 24 consecutive months, beginning February 2, 1996.

On February 15, 1996 a board of examiners considered evidence and determined that it was satisfied that Mr. Dunn was not adversely affected by a mental disability or a dependency on alcohol or drugs and that he was competent to practise law, provided he comply with his undertaking not to consume alcohol, to continue to attend Alcoholic Anonymous meetings on a regular basis and to continue on a course of treatment.

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